In the

SUPREME COURT OF THE UNITED STATES

RECEIVED
MAR 28 1977
OFFICE OF THE CLERK
SUPREME COURT, U.S.

OCTOBER TERM, 1976

No. 75-1775

THE COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

JACK B. WESTCOTT,

Respondent.

ON A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL
COURT OF MASSACHUSETTS

SUPPLEMENTAL BRIEF FOR THE PETITIONER

FRANCIS X. BELLOTTI
Attorney General

S. STEPHEN ROSENFELD
Assistant Attorney General

HOWARD WHITEHEAD
Assistant Attorney General

2019 McCormack Building
One Ashburton Place
Boston, Massachusetts 02108
Tel.: (617) 727-1014
Attorneys for the Petitioner

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-1775

THE COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

JACK B. WESTCOTT,

Respondent.

ON A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL
COURT OF MASSACHUSETTS

SUPPLEMENTAL BRIEF FOR
THE PETITIONER

Preliminary Statement

By invitation of the Court, Massachusetts herewith submits a supplemental brief on the "propriety of this Court's taking judicial notice of the records of the Merchant Vessel Documentation Division of the Coast Guard insofar as those records reveal that Mr. Westcott's vessel, Suzanne, has, since February 9, 1971, been federally enrolled and licensed 'to be employed in carrying on the mackerel fishery.' 46 U.S.C. §§251, 263."

Argument

This Court has, on numerous occasions, taken judicial notice of records kept by the executive branch of the federal government. See, e.g., Bowles v. United States, 319 U.S. 33, 35 (1943) (Selective Service); Tempel v. United States, 248 U.S. 121, 130 (1918) (Department of War); Jones v. United States, 137 U.S. 202, 214-224 (1890) (Department of State). But see Great Northern Railway Co. v. Steinke, 261 U.S. 119, 125-126 (1923) (judicial notice refused as to files of General Land Office). Although the Court has never clearly articulated the basis for its action in these cases, such basis appears to have its roots in the principle that one branch of the government ought to be able to ascertain what another branch of the government is doing without having to resort to the rigors of formal proof. See generally 1 J. WEINSTEIN AND M. BERGER, COMMENTARY ON RULES OF EVIDENCE FOR THE UNITED STATES COURTS AND MAGISTRATES, ¶200[10] (1976). In any event, the cases establish that the records of the various executive departments are a proper subject for judicial notice by this Court.

Conclusion

For the reasons stated above, Massachusetts concludes that the Court may take judicial notice of the records in question. 1/

Respectfully submitted,

FRANCIS X. BELLOTTI
Attorney General

S. STEPHEN ROSENFELD
Assistant Attorney General

HOWARD WHITEHEAD
Assistant Attorney General

1/ Massachusetts notes, however, that it is unable to discern the relevance of such records to the single issue briefed and argued by the parties.